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IN THE COURT OF APPEALS OF INDIANA

LOK MABBITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0711-CR-978
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0609-FC-391
Cause No. 49D03-0703-FC-58

August 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Lok Mabbitt appeals his twelve-year sentence for two Class C felonies. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 30, 2006, while in possession of a sword or hatchet,[1] Mabbitt threatened to kill a neighbor and chased the neighbor down the street. The State charged Mabbitt with intimidation, a Class C felony,[2] in Cause No. 48D03-0609-FC-391.

Then, while out on bond for the intimidation offense, Mabbitt threw a frying pan at his girlfriend. The pan struck her in the head, causing bleeding, swelling, pain, and scarring. Accordingly, on March 14, 2007, the State charged Mabbitt with battery by deadly weapon, a Class C felony,[3] under Cause No. 49D03-0703-FC-58.

Mabbitt and the State entered a plea agreement on August 13, 2007. Mabbitt agreed to plead guilty to intimidation as charged and to battery causing serious bodily injury, a Class C felony.[4] The agreement provided a sentencing cap of "six (6) years executed." (App. at 16.) The court found the following aggravators:

> He was on bond for one of them and then commented [sic] the other one[.] Which is an aggravated [sic] circumstance and his prior criminal history which is minimal but it is still there and it is significant cause [sic] it reflects on his character and another aggravator would be the fact that he refuses to stay on his medication which would apparently allow him to be a law abiding citizen but when he goes off his medication he becomes rather bizarre.

(Tr. at 18-19.) The court sentenced Mabbitt to six-years imprisonment for each

[1] The charging information indicates Mabbitt had a hatchet. At the sentencing hearing, his mother testified he had a sword. The factual basis provided for the guilty plea provides no clarification.
[2] Ind. Code §§ 35-45-2-1(a)(1), 1(b)(2).
[3] Ind. Code § 35-42-2-1(a)(3).
[4] Ind. Code § 35-42-2-1(a)(3).

conviction, with the two sentences to run consecutively.[5] The sentence for intimidation was ordered served executed, while the sentence for battery was suspended to probation.

DISCUSSION AND DECISION

Mabbitt argues his "enhanced sentence" is erroneous because "the court failed to consider Mabbitt's guilty plea and limited criminal history as significant mitigating circumstances." (Appellant's Br. at 8.)[6] "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* To demonstrate a trial court abused its discretion in failing to find a mitigator, a defendant must have raised the mitigator at sentencing and must demonstrate the alleged mitigator is "both significant and clearly supported by the record." *Id.* at 492-93.

Mabbitt first alleges the court abused its discretion when it "failed to consider his limited criminal history as a mitigating factor." (Appellant's Br. at 10.) We reject Mabbitt's assertion that a trial court could abuse its discretion by failing to recognize a mitigator in a prior criminal history of "only three (3) [non-violent] misdemeanor

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[5] "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Ind. Code § 35-50-2-6(a).

[6] In his Summary of the Argument, Mabbitt "further contends the twelve (12) year sentence is inappropriate." (Appellant's Br. at 7.) Although Mabbitt's statement of relevant law explains our constitutional authority to revise a sentence if it is inappropriate in light of the defendant's character and the nature of the defendant's offense, Mabbitt does not provide any argument regarding his character or offense. Accordingly, we address only whether the court abused its discretion in failing to find mitigating circumstances in Mabbitt's guilty plea and "limited criminal history." (Appellant's Br. at 10.) *See* Ind. Appellate Rule 46(A)(8).

We also note the trial court was required to order the sentences for these crimes served consecutively because Mabbitt committed the battery offense while he was released on bond for the intimidation offense. *See* Ind. Code § 35-50-1-2(d)(2)(A).

convictions." (*Id.*) Criminal history may be so insignificant that it deserves little or no weight as an aggravator, and absence of criminal history may deserve consideration as a mitigator. *Townsend v. State*, 860 N.E.2d 1268, 1272 (Ind. Ct. App. 2007), *trans. denied* 869 N.E.2d 454 (Ind. 2007). But three misdemeanor convictions is neither a "significant" mitigator, nor a mitigator "clearly supported by the record." *Anglemyer*, 868 N.E.2d at 493. There was no abuse of discretion. *Townsend*, 860 N.E.2d at 1272.

Mabbitt next cites his guilty plea. While a guilty plea is a mitigating circumstance, it "is not automatically a significant mitigating factor." *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). Its significance "varies from case to case." *Anglemyer*, 875 N.E.2d at 218. If a defendant's plea is a pragmatic decision, the court is not required to afford the plea much weight. *Id.* We cannot say the court abused its discretion by failing to mention his plea where it appeared the State would have no difficulty proving Mabbitt's commission of the crimes. *See id.* (finding no abuse of discretion in failure to mention plea as a mitigator where the evidence against the defendant was "overwhelming").

Even if the court should have considered Mabbitt's plea as a mitigating circumstance, we would not find reversible error. The sentencing range for a Class C felony is two to eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6(a). The court gave Mabbitt two six-year sentences. The trial court found aggravators in Mabbitt's criminal history, his violation of bond, and his failure to take his medication. In light of the court's explanation of the aggravators at sentencing, we believe the court's recognition of Mabbitt's plea as a minor mitigator would not have

resulted in a different sentence. *See McCann v. State*, 749 N.E.2d 1116, 1121 (Ind. 2001) (affirming sentence despite one improper aggravator because with three valid aggravators and no mitigators, Court could "say with confidence that the trial court would have imposed the same sentence").

Affirmed.

NAJAM, J., and ROBB, J., concur.